

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 642**

[Docket No. 60600-6130]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic****AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Final rule; preseason adjustment.

**SUMMARY:** The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC), permitting requirements, and bag limits for the Gulf migratory group of king mackerel in accordance with the framework procedure under Amendment 1 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This notice (1) reduces TAC and allocations for Gulf migratory group king mackerel based on recent catch data; (2) changes the requirements for permits for commercial fishing vessels; and (3) provides for reducing bag limits for recreational fishermen to zero (0). The intended effects are to protect the king mackerel in the Gulf migratory group and still allow a catch by the important recreational and commercial fisheries that are dependent on this species, to allow charter vessels to fish commercially, and ensure that the recreational allocation is not exceeded.

**EFFECTIVE DATE:** July 1, 1986. This rule is being issued prior to approval by the office of Management and Budget (OMB) of the information collection requirements in § 642.4. When OMB approval is received, a notice will be published in the *Federal Register* making this section effective.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Geagan, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The king mackerel fishery is regulated under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and its final regulations (50 CFR Part 642). An amendment to the FMP (Amendment 1) was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985). On June 9, 1986 (51 FR 20847) a notice of preliminary preseason adjustment of the total allowable catch, permitting requirements and bag limits for the Gulf migratory group of king mackerel, in accordance with the framework procedures at § 642.27, was published for comment. The comment period ended June 24, 1986.

The preamble to the preliminary notice contained a description of the need and rationale for implementing the changes in TAC, permitting requirements, and bag limits. These discussions are not repeated here.

**Comments and Responses**

Comments were received from the South Atlantic Fishery Management Council, the Texas Parks and Wildlife Department, and a Sea Grant extension service seafood technologist.

The Council questioned the deletion of reference to the FCZ in § 642.1(b). NOAA has omitted this reference because of a conflict created by this reference with the area of jurisdiction for the collection of catch statistics which extends into State waters.

The South Atlantic Council also commented that the definition of "charter vessels" should reflect their intent that a charter vessel is considered under charter when carrying paying passengers even if the total number of persons aboard is less than three (3). The criteria of having three (3) or more passengers was implemented at 51 FR 9659, March 20, 1986. Revision of the definition of "Charter vessel" would require formal action by both Councils. Therefore, no changes are made regarding this item.

The Council commented that the criteria for meeting the 10 percent income requirement to qualify for a permit to commercially fish king mackerel should include "the sale of seafood products". NOAA agrees with the Council. Therefore, § 642.4(b)(6) has been revised accordingly.

The Texas Parks and Wildlife Department (TPWD) commented that the Gulf of Mexico Fishery Management Council had recommended not allowing charterboats operating off Texas to fish

commercially and that NOAA's omission of the Council's recommendation was arbitrary and unjustified. NOAA does not agree. The exemption would not promote conservation as claimed by the TPWD. Conservation is promoted by the commercial quota for the western Gulf that applies to king mackerel which migrate throughout the area. The commercial fishery will be closed when the quota is reached, regardless of where the fish are caught.

A Sea Grant extension service seafood technologist questioned the sale of king mackerel taken by recreational fishermen. He objected to the counting of these fish against the commercial quotas or allocation. This commenter recommended that only permitted fishermen be allowed to sell their catch of king mackerel. NOAA does not concur. In establishing the formula for allocation of the king mackerel harvest between recreational and commercial fishermen an additional two (2) percent was shifted from the recreational allocation to the commercial allocation to compensate for the sale of king mackerel by recreational fishermen.

#### Changes From the Preliminary Notice

##### Section 642.4

In paragraph (a)(2), the word "allocations" is changed to "quotas" to maintain consistency in the use of these terms.

Paragraph (b)(6) is revised by adding the words ", including the sale of seafood products" to reflect that an individual deriving 10 percent of their gross income for the preceding calendar year from any aspect of the commercial fishery qualifies for a commercial permit.

##### Section 642.21

Paragraph (c)(1) is corrected to indicate that this purse seine harvest quota is applicable to the Gulf migratory group of king mackerel regardless of its location and is not limited to the Gulf of Mexico.

Table 2 is corrected to show the Gulf commercial quota in the eastern zone for all types of gear as 0.60 million pounds and the Gulf purse seine quota as 0.06 million pounds.

The "footnote" reference for the purse seines in the Gulf eastern and western zones commercial quotas in Table 2 is modified to read "Purse seines quota only; excludes all other gear types" for clarification purposes.

Table 2 is corrected to reflect that closure of the Gulf recreational allocation is invoked based on projected catches.

##### Section 642.28

In paragraph (c)(2) the phrase "(more than three (3) persons aboard including captain and crew)" is added to include within the paragraph the meaning of the term "under charter".

##### Other Matters

This action is taken under the authority of 50 CFR 642.27 and is taken in compliance with Executive Order 12291. This action is covered by the supplemental regulatory impact review and supplemental regulatory flexibility analysis which concluded that the authorizing regulations could have a significant economic impact on a substantial number of small entities.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under OMB control number 0648-0097.

##### List of Subjects in 50 CFR 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 15, 1986.

Carmen J. Blondin,

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

#### PART 642—[AMENDED]

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 642.1 is amended by revising paragraph (b) to read as follows:

##### § 642.1 Purpose and scope.

(b) This part regulates fishing for coastal migratory pelagic fish by fishing vessels of the United States off the Atlantic Coastal States south of the Virginia-North Carolina border and in the Gulf of Mexico.

3. Section 642.2 is amended by revising the definition of "Charter vessel" to read as follows:

##### § 642.2 Definitions.

*Charter vessel* (includes headboats) means a boat or vessel whose captain or operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. Charter vessels with permits to fish on the commercial allocation for king mackerel are under charter when there are more

than three (3) persons aboard including captain and crew.

4. Section 642.4 is amended by revising paragraphs (a) (1) and (2), and (b)(6) to read as follows:

##### § 642.4 Permits and fees.

(a) *Applicability.* (1) Owners or operators of fishing vessels which fish for king mackerel under commercial quotas in § 642.21(a) are required to obtain an annual vessel permit.

(2) Owners or operators of charter vessels may obtain a permit to fish under the commercial quotas for king mackerel provided they adhere to bag limits while under charter.

(b) \* \* \*

(6) A sworn statement by the owner or operator certifying that at least 10 percent of his or her earned income was derived from commercial fishing, including the sale of seafood products, during the preceding calendar year (January 1 through December 31);

5. Section 642.7 is amended by revising paragraph (a)(18), adding a new paragraph (a)(27), removing paragraph (a)(28), and designating paragraphs (a) (29) through (31) as (a) (28) through (30) to read as follows:

##### § 642.7 Prohibitions.

(a) \* \* \*

(18) Fish for, retain, or have in possession in the FCZ aboard a vessel permitted to fish under § 642.4 king mackerel from a migratory group or allocation zone after the commercial quota for that migratory group or allocation zone in § 642.21(a) has been reached and closure has been invoked as specified in § 642.22(a) (Table 2), except as provided for in § 642.28(c)(2);

(27) Possess king mackerel harvested in the FCZ under the recreational allocation set forth in § 642.21(b) after the bag limit for that recreational allocation has been reduced to zero (0) as specified in § 642.22(b);

6. Section 642.21 is amended by revising paragraphs (a), (b), and (c), and redesignating existing paragraph (i) as (f) to read as follows:

##### § 642.21 Quotas and allocations.

(a) *Commercial quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.93 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.60 million pounds for the eastern allocation zone;

(ii) 0.27 million pounds for the western allocation zone; and

(iii) 0.06 million pounds for purse seines (see Figure 2 and paragraph (f) of this section for description of allocation zones).

(2) The commercial allocation and quota for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year.

(3) A fish is counted against the commercial quota or allocation when it is first sold (Table 2 of Appendix A).

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 1.97 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

(c) *Purse seine quota for king mackerel.* (1) The total harvest of king mackerel by purse seines from the Gulf migratory group of king mackerel is limited to 0.06 million pounds per fishing year.

(2) The total harvest of king mackerel by purse seine from the Atlantic Ocean is limited to 0.40 million pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraph (a) of this section (Table 2 of Appendix A).

7. Section 642.22 is amended by revising paragraph (b) to read as follows:

**§ 642.22 Closure.**

(b) The Secretary, after consulting with the Councils and by publication of a notice action in the **Federal Register**, may reduce the bag limit for the recreational fishery for king mackerel in the Atlantic or Gulf migratory group to zero (0) when the allocation for that group under § 642.21(b) is reached or is projected to be reached. After such reduction, all king mackerel caught must be returned to the water immediately and possession of king mackerel on board recreational vessels is prohibited.

8. Section 642.28 is amended by revising paragraph (c) to read as follows:

**§ 642.28 Bag and possession limits.**

(c)(1) After a closure under § 642.22(a) is invoked for the quotas specified in § 642.21(a), vessels permitted under § 642.4 may not fish for king mackerel in the zone(s) for that allocation or quota under the bag limit specified in paragraph (a) of this section except as provided for under paragraph (c)(2).

(2) Charter vessels permitted to fish under the commercial quotas for king mackerel may fish under the bag limit specified in paragraph (a) of this section provided they are under charter (more than three (3) persons aboard including captain and crew) and the recreational fishing allocation for the applicable migratory group of king mackerel under § 642.21(b) has not been closed under § 642.22(b).

**Appendix A [Amended]**

9. Table 2 of Appendix A is revised to read as follows:

TABLE 2.—KING AND SPANISH MACKEREL QUOTAS AND TOTAL ALLOWABLE CATCH (TAC) IN MILLION POUNDS (LBS.) FOR WHICH CLOSURES ARE INVOKED FOR SPECIFIC MIGRATORY GROUPS OR ALLOCATION ZONES OR GEAR TYPES. <sup>1</sup>

Migratory group(s)	Fishing year	Gear	Allocation zone	Fishing year quota TAC (lbs.)	Fishing year prohibition on sale and/or catch invoked when—
King Mackerel:					
Atlantic, commercial.....	1 Apr.-31 Mar.....	All types.....	Entire range <sup>2</sup>	3.59	Sales from migratory group are projected to reach quota.
Do.....	1 Apr.-31 Mar.....	P.S. <sup>3</sup>	Atlantic Ocean <sup>4</sup>	0.40	Landings from migratory group are projected to reach quota.
Atlantic, recreational.....	1 Apr.-31 Mar.....	All types.....	Entire range <sup>2</sup>	6.09	Catches from migratory group are projected to reach allocation.
Gulf, commercial.....	1 July-30 June.....	All types.....	Western zone <sup>2</sup>	0.27	Sales from migratory group are projected to reach quota.
Do.....	1 July-30 June.....	All types.....	Eastern zone <sup>2</sup>	0.60	Do.
Do.....	1 July-30 June.....	P.S. <sup>3</sup>	Entire range <sup>2</sup>	0.06	Landings from migratory group are projected to reach quota.
Gulf, recreational.....	1 July-30 June.....	All types.....	Entire range <sup>2</sup>	1.97	Catches from migratory group are projected to reach allocation.
Spanish Mackerel:					
	1 Jan.-31 Dec.....	All types.....	G.A. <sup>4</sup>	27.00	When landings are projected to reach TAC.
	1 Jan.-31 Dec.....	P.S. <sup>3</sup>	Atlantic Ocean	0.30	When landings are projected to reach quota.
	1 Jan.-31 Dec.....	P.S. <sup>3</sup>	Gulf of Mexico	0.30	Do.

<sup>1</sup> See Figure 2 for delineation of migratory group ranges and allocation zones.  
<sup>2</sup> The range of migratory groups varies by season (§ 642.29)—See Figure 2.  
<sup>3</sup> See Figure 2 and § 642.21(e).  
<sup>4</sup> See § 642.21(e).  
<sup>5</sup> Purse seines quota only; excludes all other gear types.  
<sup>6</sup> Gulf of Mexico & Atlantic.